

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MARK NUNEZ, et al.,

Plaintiffs,

**DECLARATION OF
CHRISTOPHER MILLER**

-against-

CITY OF NEW YORK, et al.,

11 Civ. 5845 (LTS)(JCF)

Defendants.

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UNITED STATES OF AMERICA,

Plaintiff-Intervenor,

-against-

CITY OF NEW YORK and NEW YORK CITY
DEPARTMENT OF CORRECTION,

Defendants.

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STATE OF NEW YORK)

:SS:

COUNTY OF QUEENS)

CHRISTOPHER MILLER declares pursuant to 28 U.S.C. Code §1746 under penalty of perjury that the following is true and correct:

1. I am the Deputy Commissioner of Classification, Custody Management and Facility Operations with the New York City Department of Correction (“DOC”), a position that I have held since July 25, 2022. Among my responsibilities is oversight of the intake processes at DOC.

2. I submit this declaration to the Court on November 15, 2023. September 15, 2023. This is my seventh report on intake; the others were submitted on February 8, 2023, March 20, 2023, April 17, 2023, May 17, 2023, June 21, 2023, and September 15, 2023.

3. The *Nunez* Second Remedial Order requires the Department to “[p]rocess all incarcerated individuals, including but not limited to new admissions and intra-facility transfers, through Intake and place them in an assigned housing unit within 24 hours. The Department shall provide the necessary Intake staff and space to satisfy this requirement. By November 15, 2021, the Department shall develop and implement a reliable system to track and record the amount of time any incarcerated individual is held in Intake and any instance when an individual remains in Intake for more than 24 hours.” (1.(i)(c)). It is the Department’s position that it is complying with this provision for implementation of a reliable tracking system.¹

A. New Admissions

4. Procedures for new admissions have not changed since my previous declarations.

5. DOC continues to meet its obligation to house individuals within 24-hours of their entry into custody in the courthouse, stopping the clock when an event outside our control makes it impossible to continue processing. According to data from the New Admission Dashboard, 2,668 new male admissions were housed in the Eric M. Taylor Center (“EMTC”) during the 56-day period from September 15, 2023 (the date of my last declaration) to November 9, 2023 (the data end date for this declaration). That is an average of approximately 48 a day. Of those, none were housed beyond 24 hours. The average time was 15.23 hours, excluding clock stoppages. There

¹ Since my last declaration all individuals who pass through intake, both new admission and non-transfers, such as religion or clinic/medical appointments, are tracked in ITS, except Court Production. Court production is tracked via the previously established accountability system described in paragraph 13 below and in my earlier declarations.

were a total of 149 clock stoppages during the 56-day period: 149 for court, 19 for hospital, 5 for URGI care, 1 for bail paid, and 47 refusals.

6. Newly admitted women at the Rose M. Singer Center (“RMSC”) are also being housed within the 24-hour requirement, with the clock being stopped only when an event outside our control makes it impossible to continue processing. According to the New Admission Dashboard, 256 new admissions were housed in RMSC during the 56-day period, an average of approximately 5 a day (4.57 rounded up). Of those, none was housed beyond 24 hours, and the average time was 10.36 hours, excluding clock stoppages. There were a total of 43 clock stoppages during the 56-day period: 23 for court, 3 for hospital, and 23 refusals.

7. Since the date of my last declaration the Nunez Compliance Unit (“NCU”) conducted four audits of the intake process at EMTC on September 26, 2023, October 10, 2023, October 24, 2023, and November 7, 2023. As before, NCU compared Dashboard times to Genetec surveillance times.

8. NCU’s September 26th audit, at 0330 hours, indicated there were 13 new admission individuals in intake. Of the 13 individuals 10 were reviewed by NCU. Overall, out of the 10 individuals observed, all were housed/departed intake within 24 hours from arrival, including 4 individuals with clock stoppages. With respect to the New Admission Dashboard data as compared to Genetec footage for arrival time, all 10 individuals were entered correctly, within the 20-minute grace period. With respect to the New Admission Dashboard data as compared to Genetec footage for housed time, 4 of the 10 individuals were entered correctly, within the 20-minute grace period; three individuals were discharged from DOC custody and as such there were no “housed” time entries for these individuals. With respect to the 3 data entry errors, all 3 individuals were entered as housed 24 minutes before they were observed entering the housing area via Genetec.

9. NCU's October 10th audit, at 0245 hours, indicated there were 15 new admission individuals in intake. Of the 15 individuals 10 were reviewed by NCU. Overall, out of the 10 individuals observed, all were housed/departed intake within 24 hours from arrival, including 1 individual with a clock stoppage. With respect to the New Admission Dashboard data as compared to Genetec footage for arrival time, all 10 individuals were entered correctly, within the 20-minute grace period. With respect to the New Admission Dashboard data as compared to Genetec footage for housed time, 9 of the 10 individuals were entered correctly, within the 20-minute grace period. With respect to the 1 data entry error, the individual was entered as housed 27 minutes before he was observed entering the housing area via Genetec.

10. NCU's October 24th audit, at 0100 hours, indicated there were 17 individuals in the intake, 15 of them were new admission individuals. All 15 new admission individuals were reviewed by NCU. Overall, out of the 15 individuals observed, 14 were housed within 24 hours from arrival. Housing for one individual exceeded the 24-hour period, however, said individual had a court clock stoppage. With respect to the New Admission Dashboard data as compared to Genetec footage for arrival time, all 15 individuals were entered correctly, within the 20-minute grace period. With respect to the New Admission Dashboard data as compared to Genetec footage for housed time, 11 of 15 individuals were entered correctly, within the 20-minute grace period. The four data entry errors were as follows: 3 individuals were entered as housed between 34 minutes and 1 hour and 22 minutes after they were already in the housing unit; 1 individual was entered as housed 9 hours and 27 minutes before he was observed entering the housing area. The data entry errors were made by 2 Members of Service ("MOS"). As confirmed with AC Harvey the MOS responsible for the 9 hour and 27-minute discrepancy was retrained and Corrective Interviews were issued to MOS and her supervisors.

11. NCU's November 7th audit occurred at 0600 hours. Of the 15 new admission individuals 12 were reviewed by NCU. Overall, out of the 12 individuals observed, all were housed/departed intake within 24 hours from arrival. With respect to the New Admission Dashboard data as compared to Genetec footage for arrival time, 9 of 12 individuals were entered correctly, within the 20-minute grace period; the three data entry errors were as follows: arrival time for 3 individuals was entered between 22 and 31 minutes after the individuals were observed entering the intake. With respect to the New Admission Dashboard data as compared to Genetec footage for housed time, 11 of 12 individuals were entered correctly, within the 20-minute grace period; one individual was discharged from DOC custody and as such there were no "housed" time entry for this individual.

12. Additionally, IT continues to send a daily email to relevant stakeholders, including myself, titled "EMTC New Admissions Completions Last 24 Hours" which lists statistics for EMTC new admissions including the number housed, the average time in intake, the minimum time in intake, the maximum time in intake, the individuals housed in more than 24 hours, and the number of clock stoppages.

B. Inter/Intra Facility Transfers and Facility Intake Areas

13. The five-person team that monitors persons-in-custody ("PIC") in the facility intake areas discussed in my previous declarations remains in place and continues to expedite movement. As I have noted in earlier declarations, at any time there is one person from the five-member team who is monitoring PIC movement through facility intake. Every four hours, a member of the team receives information from each facility on who is in each intake area (the individual's name, book and case number, the reason that they are there, and the time of their arrival) as well as a screenshot of the ITS system and a photograph from the Genetec system for each pen. The assigned officer

also has access to the live video feed from the facility intake areas. The assigned officer checks whether individuals noted at each four-hour mark have been in the intake area for four hours or more, and if so the monitoring officer contacts the facility for an explanation and takes steps to expedite the individual's movement. The members of this team, as well as all intake supervisors, have been instructed that under no circumstances should any PIC remain in an intake area for more than 24 hours. (If a PIC is not present in Intake at the four-hour mark, then of course they will not be noted in this system – but that means that they were in Intake for less than four hours.)


14. Using ITS-generated data, we capture the times for PICs who are changing their housing units through the inter/intra facility transfer process with more precision. I review the ITS generated data daily. From September 15, 2023 to November 9, 2023, the ITS data shows that there were 1,599 inter-facility housing assignment transfers and 1,152 intra-facility housing assignment transfers. According to the ITS data, for inter-facility transfers, the average time in intake (counting the time in both the sending and the receiving facility) was 2.2 hours, and the maximum time was 15.9 hours. For intra-facility transfers, the average time was 4.0 hours and a maximum time of 23.2 hours.

15. DOC data quality analysts have been reviewing the ITS system for errors. I review that report daily. The Department is still not perfect in entering every intra-inter facility transfer in the ITS system. The percentage properly entered on any given day varies from a minimum of 51% to a maximum of 91%, with a 79% median rate. We are working to improve the reliability of the entry of data into the ITS system, and will confer with the Monitoring Team on those efforts. The observations of the five-person team, however, give me full confidence that no inter-intra facility transfer is in intake anywhere close to 24 hours.

16. OMAP continues sending daily emails for the previous day to relevant stakeholders titled "Inter-Facility Intake Monitoring Report". The report sets forth the PIC intake stays per facility and the percent completion of inputting intake information for each PIC.

17. The Department's robust system of oversight and checks and balances remains in place to ensure that individuals are not languishing in intake. I will continue to consult with the Monitoring Team regarding intake compliance and recommendations for improvements as needed.

Dated: November 14, 2023
East Elmhurst, New York



Christopher Miller